

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANIEL KLIGER on behalf of himself
and on behalf of all others similarly
situated,

Plaintiff,

-against-

LIBERTY SAVERITE
SUPERMARKET, INC., and USHER
JALAS,

Defendants.

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BLOCK, Senior District Judge:

Magistrate Judge Tiscione issued a Report and Recommendation (“R&R”) recommending that a default judgment be entered against all defendants in the total amount of \$20,494.45. The R&R advised that objections were due within 14 days and warned that “[f]ailure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals.” R&R 22. The R&R was served on all defendants at their last known address on September 18, 2018, making objections due by October 2, 2018. To date, no objections have been filed.

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without de novo review. *See*

Thomas v. Arn, 474 U.S. 140, 149–50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will, however, excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. However, the R&R’s calculation of prejudgment interest must be updated to reflect interest between the date of the R&R and the entry of judgment.

Accordingly, the Clerk shall enter judgment in accordance with the R&R, except that the amount of prejudgment interest—and, therefore, the total amount of the judgment—shall be increased by \$0.96 per day¹ multiplied by the number of days between September 17, 2018, and the day on which the judgment is entered..

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
October 3, 2018

¹9% annual interest ÷ 365 days × \$3,892.60 in principal.